

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
) CC Docket No. 96-21
Bell Operating Company)
Provision of Out-of-Region)
Interstate, Interexchange Services)

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COMMENTS OF AMERITECH

Ameritech respectfully files these comments in response to the Commission's Notice of Proposed Rulemaking (Notice) in the above-captioned docket. As discussed more fully below, the Commission's tentative conclusion that Bell Operating Companies (BOCs) must provide out-of-region long-distance service through a separate affiliate in order to obtain nondominant status is at odds with the Commission's recognition that BOCs are not likely to possess market power in the provision of out-of-region service. It is also inconsistent with the intent of the Telecommunications Act of 1996. Ameritech urges the Commission to revise its tentative conclusion and hold, instead, that out-of-region long-distance services provided by BOCs are nondominant, regardless of whether those services are provided on a separated or integrated basis.

The Commission should hold, further, that out-of-region long-distance services should not be subject to Part 64 requirements, regardless of whether those services are provided through an affiliate or on an integrated basis. At a minimum, the Commission should hold that Part 64 requirements do not

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apply to any BOC that is subject, at the state and federal level, to regulatory regimes, such as pure price cap regulation, under which its rates are unaffected by its rate-of-return.

A. Dominant Status is Appropriate Only for Entities with Market Power

The regulatory framework under which the Commission classifies carriers as dominant or nondominant was established in the Commission's Competitive Carrier proceeding. In that proceeding, the Commission defined dominant carriers as those possessing market power, and nondominant carriers as those lacking market power. The Commission described market power as the ability to control price in the marketplace -- that is to sustain prices either unreasonably above or below costs:

We define a dominant carrier as a carrier that possesses market power. Market power refers to the control a firm can exercise in setting the price of its output. A firm with market power is able to engage in conduct that may be anticompetitive or otherwise inconsistent with the public interest. This may entail setting price above competitive costs in order to earn supranormal profits, or setting price below competitive costs to forestall entry by new competitors or to eliminate existing competitors. In contrast, a competitive firm, lacking market power, must take the market price as given, because if it raises price it will face an unacceptable loss of business, and if it lowers price it will face unrecoverable monetary losses in an attempt to supply the market demand at that price.¹

Among the factors the Commission considers in determining whether a firm has market power are: the number and size distribution of competing firms, the nature of barriers to entry, the availability of reasonably

¹ First Report at 20-21

substitutable services, and whether the firm controls "bottleneck facilities." With respect to this last criterion, the Commission has stated that control of bottleneck facilities exists "when a firm or group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants."²

The issue before the Commission in this proceeding, therefore, is whether, based on these criteria, BOCs have market power in the provision of out-of-region long-distance services. If they do, the Commission may subject those offerings to dominant carrier regulation; if they do not, nondominant status is required.

B. BOCs Lack Market Power in Out-of-Region Long-Distance Service

Applying these criteria, it is clear that BOCs have no market power in the provision of out-of-region long-distance services. BOCs will enter the long-distance marketplace with no customers, no presubscribed lines, no traffic, and no revenues. They will be competing against some 500 incumbent carriers, including four nationwide facilities-based carriers.³ Singularity and collectively, these carriers offer a full range of high quality services that will be fully substitutable for BOC services. Moreover, entry barriers in the long-distance marketplace are low, as is evidenced by the rapid growth in the number of carriers purchasing equal access -- from 169 in March, 1986, to 458

² Id.

³ As the Commission has recognized: "[V]irtually all customers today, including resellers, have numerous choices of equal access carriers employing facilities or resale, or both." Motion of AT&T Corp. to be Re-Classified as a Nondominant Carrier, FCC 95-427, released October 23, 1995, at para. 71.

in September 1994.⁴ Finally, BOCs could not possibly exercise "sufficient command over some essential commodity or facility" -- namely, terminating access -- as to "impede new entrants" in the long-distance marketplace. Thus, BOCs clearly meet the Commission's longstanding criteria for nondominant status for out-of-region long-distance services.

To put this matter in further perspective, one need only consider the three largest incumbent long-distance carriers. AT&T is the largest telecommunications company in the world, with total 1995 revenues of almost \$80 billion and telecommunications services revenues of over \$47 billion.⁵ It currently has over 100 million presubscribed lines, seventy percent of the nation's total,⁶ and its network handles over sixty billion calls annually.⁷ MCI has over 22 million presubscribed lines, and its 1994 revenues exceeded \$13 billion. Sprint, the nation's third-largest long-distance carrier, reported net long-distance revenues of \$6.8 billion in 1994.⁸ It serves almost ten million presubscribed lines with the nation's first and only 100% digital fiber optic network⁹ and claims as its customers 81% of the Fortune 500 largest United States industrial companies, as well as offshore-

⁴ Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, FCC, Feb. 1995, at Table 22.

⁵ AT&T 1995 Annual Report at 2.

⁶ Long Distance Market Shares, Third Quarter, 1995, Industry Analysis Division, Common Carrier Bureau, FCC, January 1996, at Table 4.

⁷ Id. at 24.

⁸ Sprint 1994 Annual Report at 1.

⁹ Id. at 8. Trends in Telephone Service at Table 27.

based multinational corporations.¹⁰ Both MCI and Sprint have entered into global alliances that have armed them with substantial capital.

Given the size and resources of these three global telecommunications giants, not to mention the hundreds of other incumbent carriers in the marketplace, it is self-evident that BOCs do not have market power in out-of-region long-distance services. Indeed, the Commission concedes the point in the Notice. It notes that the BOCs will enter the market with little or no market share, and that "significant segments of the domestic, interstate, interexchange market are characterized by substantial competition. It concludes "[t]hese facts suggest that, upon entry into the provision of out-of-region interstate, interexchange services, BOC affiliates would not be likely to possess market power."¹¹ Having recognized this, the Commission must, consistent with longstanding precedent, rule that BOCs are nondominant in the provision of out-of-region services.

C. The Commission's Tentative Conclusion is at Odds with its Own Standards for Determining Dominance and Nondominance

Notwithstanding the Commission's recognition that BOCs do not meet the Commission's own long-established criteria for dominance, the Commission tentatively concludes that BOC out-of-region long-distance services should be regulated as dominant unless offered through a separate affiliate. The Commission appears to base this tentative conclusion on a concern that BOCs could exploit their perceived control of bottleneck facilities

¹⁰ Sprint 1994 Annual Report at 8.

¹¹ Notice at para. 8.

used for terminating traffic to engage in cost shifting and discrimination. The Commission does not, however, explain how such exploitation could occur, much less how it could confer market power on BOCs in their provision of out-of-region service. For example, it does not explain why cross-subsidization should be a concern for companies that are subject to pure price caps at the federal and state level, or why for other companies, the Commission's Part 69 rules, which already require LECs to separately identify the costs of interexchange service, do not suffice. Nor does the Commission explain how, with respect to terminating traffic, BOCs could systematically, and without detection, violate the Commission's nondiscrimination requirements to the point of impeding new entry in the marketplace. Indeed, the Commission does not explain how the fact that BOCs will be terminating some traffic in region is relevant to an assessment of market power at all. In addition, the Commission ignores the provisions of the 1996 Act that require the BOCs to provide full access and interconnection to competing LECs and others. The absence of explanation here is telling. There is simply no rational basis upon which one could conclude that dominant carrier regulation is warranted.

The Commission also indicates that its tentative conclusion may be grounded in reasons of expediency. In this regard, the Commission states: "In seeking to facilitate timely entry by the BOCs into the provision of out-of-region interstate, interexchange services, consistent with the 1996 Act, we tentatively conclude that the separation requirements applied to independent LECs provide a useful model upon which to base, on an interim basis, oversight of BOC provision of out-of-region interstate, interexchange

services."¹² Ameritech appreciates and supports the Commission's efforts to move quickly in this area. To achieve this end, however, the Commission need not apply rules that were designed to address the in-region offerings of independent LECs. If the Commission is concerned with symmetry in its regulation of BOCs and independent LECs, the Commission should rule that an out-of-region offering by any LEC is subject to nondominant regulation.

D. The Commission's Tentative Conclusion is Inconsistent with the Intent of the Telecommunications Act of 1996.

The Commission's tentative conclusion that BOCs must provide out-of-region long-distance service through a separate affiliate to qualify for nondominant status is also inconsistent with the intent of the Telecommunications Act of 1996. That Act specifies the services that BOCs must provide through a separate subsidiary. Out-of-region long-distance service is not one of them. While admittedly the Commission does not propose to require a separate affiliate for out-of-region service, its tentative conclusion would effectively impose such a requirement. That is because it is simply untenable for a BOC to compete as a dominant long-distance carrier, given that much larger incumbents in the marketplace, including AT&T, are accorded nondominant status.

The clear intent of the 1996 Act was to promote competition and eliminate unnecessary and intrusive regulations. The separate affiliate condition the Commission now proposes is precisely the kind of superfluous, burdensome regulation the Act was intended to redress. Moreover, as the

¹² Id. at para. 11.

Commission has recognized in the context of video services, Congress recognized in the 1996 Act that new entrants in established markets deserve lighter regulatory burdens to level the playing field.¹³ The Commission should not ignore the plain language and clear intent of the 1996 Act. It should revise its tentative conclusion and hold that BOCs may provide out-of-region long-distance services as nondominant carriers with or without a separate affiliate.

E. The Commission Should Not Apply Part 64 to BOCs that are Subject to Pure Price Cap Regulation in all Jurisdictions

In addition to seeking comment on the conditions for nondominance, the Commission seeks comment on whether BOC out-of-region service should be treated as a nonregulated service for purposes of the Part 64 rules. Ameritech does not support the application of the Part 64 joint cost and affiliate transaction rules to the provision of regulated out-of-region interstate, interexchange services, irrespective of whether that service is provided by a separate affiliate. The Part 64 rules govern the allocation of costs between nonregulated and regulated services, not between two regulated services. Therefore, applying the joint cost rules to regulated, out-of-region service, extends those rules to a context to which they do not by their terms apply and for which they were not intended. Moreover, the Commission's Part 69 rules already require BOCs to separately identify interexchange costs, so applying Part 64 would be redundant.

¹³ Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, Report and Order and Notice of Proposed Rulemaking, FCC 96-99, released March 11, 1996, at para. 6.

If the Commission nevertheless decides to extend Part 64 rules to cover BOC out-of-region service, the Commission should not apply those rules to any BOC that is subject at the state and federal level to regulatory regimes, such as price caps without sharing, under which its rates are independent of its rate-of-return.¹⁴ The Commission has recognized that a system of "pure" price caps, with no sharing of earnings, effectively eliminates any incentive for cost shifting.¹⁵ That is because a carrier's rates are determined independent of the cost allocation process. It is for this reason the Commission requested and received authorization from Congress to eliminate depreciation prescriptions.¹⁶ Ameritech questions whether the Part 64 joint cost and affiliate transaction rules in their current form remains necessary and appropriate at all and submits that those rules should be simplified and eventually eliminated. In the meantime, however, there would appear to be

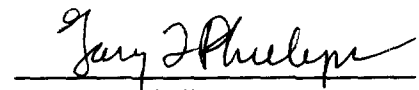
¹⁴ One example of such a regime might be the type of streamlined regulation to which AT&T was subject prior to being declared nondominant.

¹⁵ Price Cap Performance Review for Local Exchange Carriers, 10 FCC Rcd 8962 (1995) at para. 187.

¹⁶ See Section 403(d) of the Telecommunications Act of 1996. See also Separate Statement of Commissioner Rachelle B. Chong, Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended, for Alascom, Memorandum Opinion and Order, FCC 96-22, released January 26, 1996.

no reason to apply those rules to BOCs that are subject to pure price caps at the federal and state level, and there is certainly no reason to extend those rules to the regulated, as well as nonregulated, services of such BOCs.

Respectfully Submitted,



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